

PT 08-5

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY,
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 06-PT-0030

Real Estate Exemption

**For 2004 Tax Year
P.I.N. 03-35-200-042-0000
Cook County Parcel**

**Julie-April Montgomery
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mark R. Davis and Patricia Q. Ford of O’Keefe, Lyons & Hynes, LLC on behalf of National Association of Boards of Pharmacy; Shepard K. Smith, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 03-35-200-042-0000 (“subject property”) qualifies for exemption from 2004 real estate taxes as property either “used for ...other educational purposes,” 35 ILCS 200/15-35(c), or “charitable and beneficent purposes,” 35 ILCS 200/15-65(a).

In January 2005, National Association of Boards of Pharmacy (“NABP”) filed an Application for Property Tax Exemption for tax year 2004 with the Cook County Board

of Review (“Board”). The Board recommended exemption for the entire tax year of 2004. However, on February 2, 2006, the Illinois Department of Revenue (“Department”) denied NABP’s request for exemption finding that the subject property had neither exempt use nor exempt ownership in 2004. Dept. Ex. No. 1. NABP filed a timely request for a hearing with regard to the denial.

On February 28, 2007, NABP presented evidence at a formal hearing with Carmen Catizone, Executive Director of NABP, and Peter Vlasses, Executive Director of the Accreditation Council for Pharmacy Education (“ACPE”), presenting oral testimony. Subsequent to the evidentiary hearing, the parties submitted post hearing briefs. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be exempt from real estate taxes for all of the 2004 tax year.

STIPULATED FINDINGS OF FACT:

1. The subject property was in the “actual process of development” by NABP from the period January 1, 2004 through November 29, 2004 as the phrase is used in Weslin Properties, Inc. v. Illinois Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). Tr. pp. 7, 10.
2. NABP occupied and used the subject property for its operations from November 29, 2004 through December 31, 2004. Tr. pp. 8, 10.

FINDINGS OF FACT:

1. On February 2, 2006, the Department denied NABP’s Application for Non-homestead Property Tax Exemption for the tax year 2004 for the property located at

1600 Feehanville Drive, Mt. Prospect, Illinois on the basis that the subject property was not in exempt ownership or use for the tax year 2004. Dept. Ex. No. 1.

2. NABP's purpose is:

to provide for interstate reciprocity in pharmaceutical licensure, based upon a uniform minimum standard of pharmaceutical education and uniform legislation; to provide a standardized licensure examination and to improve the standards of pharmaceutical education, licensure, continued competence, and practice by cooperating with State, National and International Agencies and Associations having similar objectives. Tr. p. 27; NABP Ex. Nos. 3 (Articles of Incorporation), 5 (Constitution & Bylaws).

3. NABP's net earnings do not benefit its members, trustees, officers, or other private persons nor are they distributed. NABP Ex. No. 3.

4. NABP has no capital stock or shareholders. Tr. p. 26; NABP Ex. No. 3.

5. NABP is a not for profit corporation pursuant to the laws of Kentucky. Tr. p. 24; NABP Ex. No. 4 (Illinois Certification by the Secretary of State).

6. NABP is exempt from federal income tax pursuant to section 501(c) (3) of the Internal Revenue Code. Tr. p. 28; NABP Ex. No. 6 (NABP's IRS exemption letter).

7. NABP is exempt from Illinois' state and local sales and use taxes. Tr. p. 29; NABP Ex. No. 7 (NABP's Department exemption letter).

8. NABP is comprised of Boards of Pharmacy of the individual states, District of Columbia, the Territories and Commonwealths of the United States, and individual provinces of the Dominion of Canada. These Boards are the members of NABP. Tr. pp. 23, 30; NABP Ex. No. 3.

9. Members pay an annual membership fee of \$250. Tr. p. 51; NABP Ex. No. 15 (Financial Statements).

10. The Illinois Department of Professional Regulation (“DPR”) is charged with both issuance and renewal of Illinois pharmacy licenses. 225 ILCS 85/6, 12.
11. DPR will only issue pharmacist licenses to individuals who have met certain criteria which includes passage of an “examination recommended by the Board of Pharmacy and authorized by” DPR. 225 ILCS 85/6(5).
12. The Illinois Board of Pharmacy (“Illinois Board”) is the State Board of Pharmacy of DPR. 225 ILCS 85/3(h), 10.
13. The Illinois Board is a member of NABP. Tr. pp. 30, 32.
14. The Illinois Board formulates rules necessary to enforce the Illinois Pharmacy Practice Act (“Pharmacy Act”) as well as appoints a pharmacy coordinator to act as both executive administrator and chief enforcement officer of the Pharmacy Act. 225 ILCS 85/10-11.
15. The North American Pharmacist Licensure Examination (“NAPLEX”) is the required competence examination that was developed in response to the Pharmacy Act’s examination requirement for a test for candidates who seek to be licensed as pharmacists in Illinois. 225 ILCS 86/6. The NAPLEX is developed, administrated and scored by NABP which establishes the pass/fail standard for said exam. This exam is also administered to pharmacy candidates seeking licensure in other NABP member states and territories. Tr. pp. 34, 38-40; NABP Ex. Nos. 8 (NAPLEX State Letter of Agreement), 23.

16. Graduation from an ACPE accredited school is a prerequisite to take the NAPLEX. Tr. p. 121; NABP Ex. No. 23 (Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree¹).
17. The NAPLEX is based upon the curricula of the nation's accredited pharmacy programs. Tr. pp. 56, 58-59, 98-99.
18. In 2004, NABP administered the NAPLEX to approximately 8,000 pharmacy licensure candidates nation-wide, which included approximately 400 Illinois candidates. Tr. p. 43.
19. Beginning in 1983, NABP was asked by Illinois to develop and administer a pharmacy exam to test the qualifications of foreign pharmacy graduates to practice pharmacy. Tr. pp. 46-48.
20. NABP develops and administers the Foreign Pharmacy Graduate Equivalency Exam ("FPGEE") which is a pharmaceutical equivalency exam for foreign trained students seeking licensure in member states like Illinois. This exam reflects the pharmacy curricula of U.S. accredited pharmacy programs. Tr. pp. 46, 48-49, 59, 60, 98-99.
21. Foreign pharmacy graduates must pass the FPGEE if they are to be licensed in Illinois for the practice of pharmacy. Tr. pp. 34-35.
22. DPR refers foreign pharmacy graduates to NABP for certification that will qualify such graduates to take the FPGEE. Tr. p. 48.
23. NABP reviews the transcripts and credentials as well as licensure pharmacy curricula of foreign pharmacy graduates to ensure pharmacy standards are met for members.
- Once this evaluation is completed and the foreign graduates have passed spoken and

¹ While these standards were adopted in 2006 so as to take effect in 2007, such standards are a refinement of their predecessors. The standards have been "restructured, simplified and clarified." NABP Ex. No. 23, p. iii; Tr. pp. 114-120.

written English tests, certificates are issued by NABP. This certification is a prerequisite for foreign pharmacy candidates to take the FPGEE which tests them for pharmacy licensure in Illinois. Tr. pp. 46-49, 60, 96.

24. In 2004, NABP evaluated and administered the FPGEE to approximately 3,000 foreign pharmacy licensure candidates nation-wide, which included approximately 100 to 200 Illinois candidates. Tr. pp. 49-50.

25. The Multistate Pharmacy Jurisprudence Examination (“MPJE”) is another required exam which examines a candidate’s knowledge of how pharmacy law is interpreted and implemented in member states like Illinois. This exam is also developed, administered and scored by NABP who establishes the exam’s pass/fail standard. Tr. pp. 34, 44-45; NABP Ex. No. 9 (MPJE State Letter of Agreement).

26. NABP contracts with the Illinois Board to provide the NAPLEX and MPJE. Tr. pp. 36-38; NABP Ex. Nos. 8, 9.

27. Each question on the NAPLEX costs NABP \$2,000 to develop. Inasmuch as the NAPLEX is a 350 question examination, NABP expends \$700,000 to develop this exam. Tr. p. 52.

28. The cost to a NABP member to develop and administer a NAPLEX type (or pharmacy competency) examination would be in excess of \$2 million per year. Tr. pp. 52-53.

29. NABP’s development costs for the FPGEE are essentially the same as those of the NAPLEX but such costs for the MPJE are a little bit more. Tr. pp. 53-54.

30. Member costs for development and administration of FPGEE and MPJE type examinations would also be in excess of \$2 million per year, per exam. Tr. pp. 53-54.

31. Exam candidates pay a fee, as required by the Pharmacy Act, to NABP to take the NAPLEX, FPGEE and MPJE exams. Tr. p. 50; NABP Ex. Nos. 8, 9; 225 ILCS 85/7.
32. NABP reports NAPLEX and MPJE exam scores to the appropriate state pharmaceutical boards, including Illinois. It also reports exam results to ACPE. Tr. p. 123; NABP Ex. Nos. 8, 9.
33. Paragraph 6b of the “NAPLEX State Letter of Agreement” (“NAPLEX Agreement”) provides that the scores of candidates failing the NAPLEX are “automatically accompanied by a diagnostic breakdown according to the examination’s overall content areas” when reported to the appropriate state board. NABP Ex. No. 8.
34. Paragraph 6b of the NAPLEX Agreement as well as paragraph 7b of the “MPJE State Letter of Agreement” requires that NABP provide assistance to the appropriate state board when such board is to review either the NAPLEX or MPJE with a failing candidate. NABP Ex. Nos. 8, 9.
35. NABP provides an Electronic Licensure Transfer Program (“ELTP”) which allows for the processing of transfer applications in 6-8 weeks. The ELTP involves a review of the applicant’s credentials and disciplinary records, as well as, evaluation of whether a pharmacy license in good standing exists. This standardized information is provided to Illinois and other states for evaluation on whether or not one can receive a pharmacy license. When a NABP member performs such a review on its own, this process takes six months to a year. Tr. pp. 60-61.
36. NABP offers internships to pharmacy students. Tr. pp. 69-71; NABP Ex. No. 13 (Intern Contract with Creighton University).

37. The Pharmacy Act requires pharmacy technicians complete training in six different areas during the first six months of their employment at a pharmacy unless prior training has been established. 225 ILCS 85/17.1.
38. The Pharmacy Act deems a pharmacy technician enrolled in a college/university pharmacy program a “student pharmacist.” 225 ILCS 85/9
39. NABP publishes a newsletter “to educate, to inform, and to communicate the objectives and programs of the Association and its 66 member boards” at a “subscription rate of \$35 per year.” Tr. pp. 66-68; NABP Ex. No. 11 (NABP Newsletter).
40. NABP publishes NAPLEX and MPJE Registration Bulletins that provide information on criteria and application for taking these exams, test schedules and how to participate in score transfers. NABP Ex. Nos. 8, 9.
41. The ACPE is the United States’ sole accreditation authority for both college and university programs that offer pharmacy degrees as well as providers of continuing pharmacy education. Tr. pp. 108, 110, 113.
42. ACPE is an independent agency formed “to set national standards for the education programs and pharmacy.” Tr. p. 109.
43. Three of ACPE’s ten Board of Directors are appointed by NABP. These directors, along with ACPE staff and volunteers, participate in pharmacy school accreditation procedures that include on site school visits and petition reviews. Tr. pp. 111-112; NABP Ex. No. 23.
44. ACPE has standards and guidelines that it utilizes to evaluate school programs for pharmacy accreditation. Tr. pp. 114, 118-119; NABP Ex. Nos. 23, 24 (Accreditation

Council for Pharmacy Education, Pharmacy Degree Program Evaluation Form for Standards 2007).

45. ACPE's accreditation standards take into account the blueprint NABP uses to develop its national licensing exam –the NAPLEX- because ACPE deems such blueprint “very relevant to the education and training that pharmacists would need “ (tr. pp. 119-120) along with NABP opinions and other relevant NABP feedback. Tr. p. 120; NABP Ex. No. 23.
46. ACPE utilizes the results of the NAPLEX to measure the quality of the pharmacy school's demonstration of their students' learning and curricular effectiveness for purposes of accreditation. Tr. pp. 122-123, 128; NABP Ex. Nos. 23, 24.
47. The curriculum standards of ACPE require a science education that is based on biomedical, pharmaceutical, social/behavioral and clinical sciences. Tr. pp. 124-127, 129; NABP Ex. No. 23 (Standard No. 13: Curricular core – Knowledge, Skills, Attitudes, and Values and Appendix B).
48. ACPE Standard No. 3 mandates pharmacy schools establish and implement goals which achieve results that culminate in a successful professional pharmacy degree program that includes assessment of student learning based upon an effective curriculum. Guideline 3.3 specifically provides that NABP's exam data be employed to evaluate a school's achievement of its own curriculum and goals as compared with other accredited schools. This data is deemed, by ACPE, to measure the quality of the pharmacy education. Tr. pp. 122-123; NABP Ex. No. 23.
49. ACPE Standard No. 9 establishes the goal of a school's curriculum as the preparation of graduates for entry into the practice of pharmacy anywhere because the educational

requirements for licensure as a pharmacist have been met. This standard addresses “the process by which the curriculum is developed, the manner of teaching...the competency and outcome expectations [which are] met very well to the NABP blueprint for the NAPLEX.” Tr. 124. A school’s graduates’ performance on the NAPLEX is deemed a good indication of how well this standard is achieved. Tr. pp. 136-137; NABP Ex. No. 23.

50. ACPE Standard 15 on “Assessment and Evaluation of Student Learning and Curricular Effectiveness” recognizes NABP’s licensing exam as “the ultimate...assessment” (tr. p. 128) measure “to improve student learning.” NABP Ex. No. 23, p. 23.

51. Feedback from NABP is “guidance to the formation of the science foundation of the curriculum.” Tr. p. 126. NABP identifies “elements of the science foundation... [that ACPE] believe[s] essential.” Tr. p. 127. This feedback, along with NABP’s exam blueprint and NABP opinions were incorporated into Standard No. 13 –the core curriculum. Tr. pp. 124-129.

52. NABP’s NAPLEX and MPJE results are the sole objective assessment utilized by ACPE and pharmacy schools to assess pharmacy school curricula. Tr. p. 63.

53. NABP, working with ACPE, the College of Pharmacy and the states, provides detailed objective assessments on individual school curriculum that ACPE and pharmacy schools use to assess the relevance and acceptability of pharmacy school curricula. Tr. p. 64.

54. ACPE's evaluation form for pharmacy accreditation requires schools report their graduates' results on the NAPLEX and MPJE for the last five years, "including first time pass rates in competency area scores." Tr. pp. 135-136; NABP Ex. No. 24.
55. ACPE has a long standing policy that if a pharmacy school program falls below the established pass rate, special monitoring by ACPE is initiated in an attempt to remedy the situation, as required by the U.S. Department of Education. This policy further dictates that when a school falls "below two standard deviations in more than one year [on the NAPLEX], they would then be not meeting the [curriculum] standard and could proceed to probation." Tr. p. 139; Tr. pp. 137-138; NABP Ex. No. 24.
56. From 2003 to 2006, ACPE revised its standards based upon feedback from entities like NABP wherein focus was placed on students' professional knowledge, skills, attitudes and values and emphasis on curricular content. Tr. pp. 114-120; NABP Ex. No. 23.
57. NABP's national exams are utilized by pharmacy schools and ACPE to assess how well students did in their school pharmacy programs and also serve as the basis for whether accreditation is warranted with respect to schools' curricula based upon ACPE's national accreditation standards. Tr. pp. 58-59, 63.
58. NABP's NAPLEX and FPGEE are national exams that are based on the pharmacy curricula used in U. S. college/university pharmacy programs as espoused in ACPE's national standards, and such programs are based upon these national exams. Tr. p. 56.
59. National uniform pharmacy standards exist because colleges and universities teach in preparation for the NAPLEX and FPGEE and these exams are based upon the

curricula taught. Pharmacy college/university curricula include subjects like chemistry, biology, practice applications, drug knowledge, drug side-effects, and patient counseling and profiles. It is these subjects which ACPE states to be Standard No. 13's curricular core of knowledge, skills, attitudes and values. These are the same areas for which NABP's national exams test. Tr. pp. 40-41, 56; NABP Ex. Nos. 3, 5 (the purpose sections), 23-24.

60. The Pharmacy Act charges DPR to ensure that any Illinois registered pharmacist complete a stated number of hours of continuing education, approved by ACPE, before DPR can renew a pharmacist's license. 225 ILCS 85/12.
61. NABP is accredited as a provider of continuing pharmacy education by the ACPE, and as such provides programs, workshops and presentations. NABP conducted 18 continuing pharmacy education programs from May 1, 2004 through April 30, 2005. Tr. pp. 65, 68-69, 72, 143-144; NABP Ex. Nos. 10 (NABP's Accreditation letter from ACPE), 11, 12 (NABP Continuing Pharmacy Education Co-sponsorship Agreement).
62. For the year 2004, NABP had total unrestricted revenue of \$14,647,206 of which \$12,629,100 was from Examination and Licensure Programs. NABP Ex. No. 15.
63. For the year 2004, NABP had Operating Expenses of \$11,649,051 of which \$8,474,941 were for program expenses while \$3,174,110 were for general and administrative expenses. NABP Ex. No. 15.

CONCLUSIONS OF LAW:

An examination of the record establishes that NABP has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an

exemption for the 2004 assessment year. In support thereof, are made the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to constitutional authority, the General Assembly enacted section 15-35 (c) of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) which, in relevant part provides for exemption of :

property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes. 35 ILCS 200/15-35(c)

It is well established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171

Ill. 2d 263, 271 (1996). The party claiming the exemption bears the burden of proving, by clear and convincing evidence, that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*

The test for evaluation of entitlement to a property tax exemption was espoused by the court in Turnverein ‘Lincoln’ v. Board of Appeals of Cook County, 358 Ill. 135 (1934), which stated that it is the “primary use to which the property is devoted, and not its secondary or incidental use [that] is controlling.” *Id.* at 141. In Turnverein the education exemption was sought for a property found to provide members with “physical exercise and recreation” while only having an incidental use for school purposes. *Id.* at 143. The property housed a facility that was deemed akin to an athletic club, and as such, athletics and exercise were found to be the primary uses and/or purposes for which the property was utilized. Moreover, significant revenue was found to have been generated from both the lease of thirty percent (30%) of the property and member dues. In fact, because rent was collected from store and restaurant tenants, such income was viewed as an indication that the property housed a facility operated for profit. *Id.* at 144. Hence, the property’s primary use was found to be for recreational and physical exercise, not education, and the exemption was denied. *Id.* at 143.

Further analysis of whether property is entitled to an education exemption for tax purposes in Illinois considers People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 368 (1944), which found that four parcels leased to the University of Illinois were entitled to the education exemption. The court found that the Foundation which leased the properties to the university was a not-for-profit corporation whose corporate purpose, as expressed in its bylaws, was to assist in the development and

increase of the university's broader educational opportunities for, as well as, service to the university's students. One property was a dormitory found by the court to be a necessary facility for a university and, as such, the fact that a fee for use may have been charged was not found to be a basis for denial of the exemption because the fee was not charged to achieve a profit. *Id.* at 371. The remaining three properties housed the Union building, Student center, and Arcade building. These buildings housed facilities which offered a range of student services, as well as housed cafeterias, a library, various types of game rooms, administrative offices of various university departments, students' rooms, the university bookstore and a few privately operated businesses (restaurant, confectionary and barbershop). These properties were also deemed exempt because they were utilized to achieve the university's goals of "public education... [and the] mere fact that a part of the enterprise yields an income – incidental profit - is but of little importance where, as here, the gross income and the entire property [were] used directly and exclusively for public educational purposes." *Id.* at 374. Goodman recognized that education involves more than mere classroom instruction or a "devotion solely to academic ends." *Id.* at 372. Thus, buildings/grounds used for bowling, swimming, play, and the like were found to be "exempt as a reasonably necessary adjunct of educational and recreational processes." *Id.* at 371.

A good example of non-classroom activities that qualify for the education exemption for property tax purposes can be found in Association of American Medical Colleges v. Lorenz, 17 Ill. 2d 125 (1959), which granted exempt educational status for property occupied by a not-for-profit corporation, comprised of United States medical schools, "each of which contribute[d], annually, a substantial sum of money." *Id.* at 126.

The Association's general purpose was the improvement of medical education in the United States. To this end, the Association published materials reflective of medical schools' admission criteria and other information; compiled student data that assisted medical schools in developing their instruction programs; sponsored teaching institutes and admissions tests; appraised medical schools' curricula; assisted in the accreditation of all United States medical schools; maintained a film library; did intellectual/personality evaluations of students with regard to said students' scholastic and professional performance; and provided placement services. In finding the Association entitled to the education exemption, the court stated that "[t]here is no merit in defendants' position that only 'schools' are entitled to the exemption...[the] mere fact that class instruction in useful subjects is conducted, and hence that a 'school' of some kind is maintained, is not sufficient....On the other hand it is not essential, for the exemption, that class-room instruction be given at the site....[because] exemption may be had for property used for 'public educational purposes' as well as property used as the school itself." *Id.* at 127-128. The court found the Association's functions would be deemed exempt if performed by any one of its member schools and held that the Association's "services in improving educational standards [met] the statutory test [because w]here the functions themselves qualify for exemption it does not matter that they are performed by a separate organization rather than by the respective member institutions." *Id.* at 129. The court further determined that the Association's activities were an adjunct of the education process that assisted in the "furtherance of intellectual instruction" that should be granted education exempt status. *Id.*

Further, the court in Illini Media Company v. Department of Revenue, 279 Ill. App. 3d 432 (4th Dist. 1996), stated that Goodman established the principle that “revenue does not deprive property of its exemption, if it is merely incidental to its overarching educational goal.” *Id.* at 436-437. In Illini Media, the educational exemption was granted to a not-for-profit corporation which operated a radio station and published the university’s newspaper, yearbook and a technical journal. This operation, as stated in Illini Media’s certificate of incorporation, was to “educate University...students in the field of mass communications.” *Id.* at 436. The court found that all staff was university students, university students and staff governed the corporation, the corporation’s activities were subject to the authority of the university’s chancellor, and Illini Media was governed by a specific purpose of “hands-on” experiences for students in mass communications. The court noted that while Illini Media’s publications produced advertising and subscription revenue, such income was viewed as “incidental” and “secondary to [the] educational functional.” *Id.* at 434. In finding the education exemption warranted, the court deemed the corporation’s activities to be “educational development” and as such “an educational purpose.” *Id.* at 436. The court also found that “student workers were educated by receiving ‘hands-on’ experience in running modern media enterprises... [such that] revenue generated was incidental.” *Id.* at 437. After all “once the primary educational use is established” the law “allows entities such as Illini Media to receive exemptions.” *Id.*

While Illini Media involved a case in which revenues generated were deemed “incidental” and apparently not very significant, Big Ten Conference, Inc. v. Department of Revenue, 312 Ill. App. 3d 88 (1st Dist. 2000), involved a matter in which the education

exemption was granted to a corporation that received millions of dollars. The Big Ten is an intercollegiate athletic corporation whose certificate of incorporation and bylaws state its purpose to be: 1) control/regulation of intercollegiate athletics, 2) encouragement of “academic practices for student athletes”, and 3) establishment of “harmonious intercollegiate relationships among member institutions.” *Id.* at 89. The property utilized by the Big Ten and for which educational exemption was sought was the “work site for administrative personnel, clerical workers and support staff...[wherein] employees negotiated contracts on behalf of member universities, hosted promotional luncheons, monitored compliance with applicable rules, and assigned referees to various athletic events. *Id.* Moreover, the “Big Ten distributed \$43.5 million to member universities Most of the money came from contracts for televised coverage of athletic events. The Big Ten also earned revenues totaling more than \$4.2 million...while incurring almost \$3.9 million in expenses.” *Id.* The court stated it was “persuaded by the reasoning of National Collegiate Realty Corp. v. Board of County Commissioners, 236 Kan. 394 (1984), that “administration of intercollegiate athletic programs [was] a legitimate educational activity [that] reduce[d] administrative costs for...members [and while] athletic events so arranged also raise[d] considerable revenue for schools...this revenue [did] not alter the underlying educational character of the activity” --- “collegiate education.” *Id.* at 91-92. So even though Big Ten distributed millions to its members as a result mostly of television payments for coverage of athletic events that Big Ten had negotiated on behalf of its members, and Big Ten, itself, earned revenues equal to almost ten percent (10%) of this money it had garnered for members from such negotiations, the

court found the property qualified for the property tax exemption because it was used for educational purposes. *Id.* at 89.

With questions of what constitute educational purposes and the effect of revenue generation from property seeking exempt status, the “use test” espoused in Goodman must be explored in more depth. This test requires a determination as to whether: 1) the intent of the entity seeking the exemption is for an education purpose (Goodman, *supra* at 371); 2) said educational purpose is actually occurring on the property for which exemption is sought (*id.* at 374); 3) the educational purpose’s intent/activity is the exclusive use to which the property is devoted (*id.* at 374); and 4) the property’s use does not contemplate use “with a view to profit.” *Id.* at 375.

The intention of a corporation, as owner of the property for which exemption is sought, can be gleaned from that entity’s certificate of incorporation, charter and bylaws. Goodman at 372. Accord, Lorenz, *supra* (purpose was found to be improvement of U.S. medical education, and as such, reflective of an intent to use the property for educational purposes); and Big Ten, *supra* (had as its stated purpose, in its certificate of incorporation and bylaws, control/regulation of intercollegiate athletics, encouragement of academic practice for student athletes, and harmonious intercollegiate relations, all of which were found to be legitimate parts of collegiate education).

While the intention to be involved in exempt activities, like education, is considered an important element necessary for the grant of an exemption, such intent must, in fact, be borne out by the actual existence, on the property, of the stated exempt activities, like education. Morton Temple Association, Inc. Department of Revenue, 158 Ill. App. 3d 794 (1984). In Morton, a Masonic organization was denied the charitable

exemption for property taxes because it was found to use the property primarily for the benefit of members, performing incidental acts of charity, and as such, its use of the property was inconsistent with its charter's expression of an intention to be "organized exclusively to promote and conduct charitable activities." *Id.* at 796. The court reaffirmed that an analysis of one's activities must occur to determine if the entity seeking exempt status is as it purports to be in its charter or other documents which express its intent. The court further stated "wording of [one's] governing legal documents evidencing an intention to use its property exclusively for [exempt] purposes do[es] not relieve such an institution of the burden of proving that its property actually and factually is so used." *Id.* See, Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149,153 (1968) (denied the charitable exemption to the operator of an old folks home noting "that the general tenor of health and financial requirements set forth in plaintiff's bylaws are at odds with its chartered purpose of providing 'proper accommodation and care for the sick and homeless aged'.").

To evaluate whether actual activities that involve educational purposes do actually occur on the property, a case-by-case evaluation is required. Midwest Physician Group, Ltd. v. Department of Revenue, 304 Ill. App. 3d 939, 952 (1st Dist. 1999). In this case, the court stated the factors to be reviewed were: 1) whether the property contained a school that offered an established/commonly accepted program; 2) whether the burden of government lessened; 3) duration of study; 4) the existence of classroom instruction; and 5) whether degrees/diplomas are offered. *Id.* at 958. The court also recognized that educational purposes encompass more than schools and classroom instruction. Examples of non-school and/or non-classroom activities that qualify for the education exemption

include hands-on experience associated with educational institutions like the media corporation operated by university students in Illini Media, *supra*; associations which seek to improve education in a particular field like the Association which sought to improve medical education in the U.S. by various means which did not involve classroom instruction in Lorenz, *supra*; and collegiate sports like the football activities deemed a part of collegiate education, and as such, related to educational functions in Big Ten, *supra*.

Once the exempt purpose, as demonstrated in intent and actual use has been established, such must be deemed the exclusive² use to which the property is employed. The exclusive and/or primary use of a property involves a determination as to whether income production exists as the basis for the property's use. Northern Illinois University Foundation v. Sweet, 237 Ill. App. 3d 28 (2nd Dist. 1992). The test is:

If the primary use is for the production of income “with a view to profit,” the tax exempt status is destroyed. Thus, if the primary use is tax exempt even though it may involve...production of income, the property retains its tax exempt status....Conversely, the fact that some educational use is made of the property does not qualify it for exemption where the primary use is not tax-exempt. *Id.* at 37.

In this case the education exemption was denied because the court found the property “rented for a profit or private use without regard to meeting any educational purpose whatsoever.” *Id.* at 38. See also, Lorenz, *supra*, (where substantial sums were received but the property was found exempt because the work done on the property was found to improve education standards); and Big Ten, *supra*, (where millions of dollars were

² The word “exclusive” when used in section 200/15-35 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933). Goodman, *supra* at 371; and Turnverein, *supra* at 143.

earned at a property deemed exempt because administration of intercollegiate activities that were carried on at the property were characterized as collegiate education). Determinative to the revenue generation issue is whether activities conducted on the property are done to achieve a profit or merely to serve the stated tax exempt purpose, which could yield revenues that result in a profit. Property that may otherwise be found exempt will not lose such exempt status merely because it produces an income or profit. Only when such property is used “with a view to profit” will exempt status be destroyed. Moreover, it is irrelevant whether a profit or loss is generated. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497, 500 (1st Dist. 1983) (where a church’s lease of its parking lot to Oak Park for use as a municipal parking lot was deemed a lease with a view to profit, and as such, not exempt).

The Department argues that NABP cannot be granted the education exemption because only entities which are themselves educational institutions or have a “close connection” with educational institutions that is not “peripheral in nature” qualify for the exemption. The Department reasons that this is so because the instances in which the exemption has been granted all involved institutions “related to actual exempt educational institutions through use [so] they should be accorded the same treatment as the actual educational institution itself.” Dept. Br. p. 5. The Department reasons that such a “connection” is best explained by a tier system. In this system suggested by the Department, the first tier consists of the actual educational institutional that would be clearly exempt; the second tier consists of entities that provide direct service to educational institutions, like the Association in Lorenz, *supra*, that serviced U.S. medical schools, these would usually be exempt; and, the third tier consists of entities “which

provide services to the institution that provides services to the actual exempt educational institution,” these are too “tenuous” to be exempt. *Id.* at pp. 5-6. The Department states that NABP is not a first tier educational institution or a second tier entity with a close connection to an educational institution, or even a third tier organization which services entities that service educational institutions. The Department concludes that NABP only has a peripheral connection to pharmaceutical colleges and that is insufficient for NABP to be awarded the education exemption. *Id.*

The Department’s argument is without merit and not supported by case law. As previously stated, it is the use to which property is devoted that is determinative of exempt status, not the so-called “closeness” of an entity to an exempt organization, in this case, an educational institution, as the Department contends. Moreover, it is clear that non-classroom activities can qualify for the education exemption (Lorenz, *supra* and Big Ten, *supra*) when the property for which the exemption is sought is utilized for activities which involve educational purposes. Midwest Physician Group, *supra*.

In Illinois, the Pharmacy Act provides for regulation of the practice of pharmacy. The Pharmacy Act charges DPR with the responsibility of issuing licenses to individuals seeking pharmaceutical licensure in Illinois. In order to obtain a pharmacy license in Illinois, among other requirements, the applicant must be a graduate of a pharmacy program of a school recognized and approved by DPR and “pass an examination recommended by the Board of Pharmacy and authorized by” DPR. 225 ILCS 85/6(5). DPR is required to provide exams for original licenses at least three times a year. This exam “shall be developed and provided by the National Association of Boards of

Pharmacy” – NABP and exam applicants “shall be required to pay...a fee covering the cost of providing the examination.” 225 ILCS 85/7.

In response to Illinois’ mandate of examination as a prerequisite to pharmacy licensure, NABP developed the NAPLEX. This exam tests both pharmacy education and standards of pharmacy practice as required, in Illinois, as such are taught in accredited pharmacy colleges/universities programs. This exam is developed, by NABP, based upon both the curricula of accredited pharmacy programs and pharmacy standards required in all states, including Illinois. In 2004, approximately 8,000 applicants took the NAPLEX and approximately 400 of those were Illinois applicants. These Illinois applicants were tested pursuant to an agreement the Illinois Board has with NABP to provide and administer this exam. NABP also administers the MPJE which tests a pharmacy licensure applicant’s knowledge of how the law of the Pharmacy Act and federal pharmacy law are implemented and interpreted in Illinois. This exam is also administered in forty-five other states and is personalized to account for each individual state’s pharmacy laws. NABP also contracts with the Illinois Board to provide and administer this exam.

In 1983, the State of Illinois approached NABP to develop and administer a pharmacy exam for foreign pharmacy graduates to ensure such graduates not only qualified for pharmacy licensure in Illinois but met Illinois’ requirements for the practice of pharmacy. The exam developed and administered by NABP in response to this request is the FPGEE. A foreign pharmacy graduate who applies to DPR for an Illinois pharmacy license is referred to NABP for certification. Such certification encompasses a background evaluation of the applicant to ensure Illinois’ pharmacy standards are met,

like a transcript and character review, and passage of both an oral and written English language exams. Such evaluation and exams are prerequisites for an applicant to take the FPGEE. NABP also administers this exam for the other forty-nine states. In 2004, approximately 3,000 foreign applicants were evaluated and/or tested and approximately 100 to 200 of those were for Illinois.

Section 8 of the Pharmacy Act empowers DPR to license foreign pharmacy applicants, without examination, if such applicants are deemed by the Illinois Board to have a current pharmacy license which is “substantially equivalent to the requirements” of Illinois. 225 ILCS 85/8. NABP’s ELTP enables it to provide, to the Illinois Board, information about pharmacists from other states which encompasses a review of the applicant’s credentials and disciplinary records, as well as, verification of the existence of a pharmacy license in good standing so that a determination can be made as to whether the candidate is acceptable for pharmacy licensure. NABP completes this process in 6 to 8 weeks as opposed to the six months to one year timeframe utilized by the Illinois Board when it used to review such information itself.

The Pharmacy Act, in Section 12, also mandates that DPR ensure “completion of a total of 30 hours of pharmacy continuing education during the 2 calendar years preceding the expiration date of the [pharmacy license] certificate” that is approved by ACPE. For the period May 1, 2004 through April 30, 2005, NABP conducted 18 ACPE approved continuing pharmacy education programs.

NABP assists DPR in its Illinois state mandated functions of pharmacy licensure, pharmacy examination and foreign pharmacy candidate certifications for a deminimus \$250 annual membership fee that is paid by the Illinois Board, a unit of DPR. It is quite

clear that NABP relieves DPR of expending millions of dollars and hundreds, if not thousands, of man-hours each year to develop, provide and defend such mandated services itself.

The Pharmacy Act further mandates that DPR provide licensure examinations that test the qualifications of one to practice pharmacy in Illinois. Such examinations are based upon the curricula of pharmacy degree programs which must be recognized and approved by DPR. 225 ILCS 85/6.3. In addition, the Pharmacy Act mandates that foreign pharmacists licensure candidates be admitted when they are found by the Illinois Board to have met requirements that are “substantially equivalent” to those in force in Illinois. 225 ILCS 85/8. Such equivalency is found predominately in the passage of exams, like the NAPLEX, and graduation from ACPE accredited pharmacy programs. Both initial pharmacy licensure and transferred pharmacy licensure in Illinois are based upon passage of an exam, like the NAPLEX, which is based on the curricula of professional pharmacy degree programs. Through NABP’s provision of both national examinations and the ELTP, DPR can achieve its State mandated function that prospective Illinois pharmacists have a license based on the pharmacy curricula of accredited school programs. A uniform education standard exists because the curricula of school pharmacy programs are both tested in national exams and verified in licensure processes provided by NABP. Moreover, accredited school pharmacy programs teach in anticipation of the exams developed and administered by NABP. NABP’s primary purpose of uniform education standards is achieved in its development and administration of national examinations, as well as, a review of foreign pharmacy licenses, in conjunction with members like the Illinois Board, to achieve the mandated requirements

of the Pharmacy Act. This Act requires that Illinois licensed pharmacists be tested and verified as having pharmacy knowledge that is based upon the curricula of ACPE approved programs, and it is this curricula which is the basis of NABP's exams and license processes. NABP provides Illinois mandated services, to DPR and the Illinois Board, that achieve the educational purpose of uniform education standards/knowledge in Illinois pharmacists who seek to practice pharmacy in Illinois.

NABP's intention to operate as a corporation involved in activities concerned with educational purposes is clearly expressed in its articles of incorporation, constitution and bylaws –“Pharmaceutical licensure, based upon a uniform minimum standard of pharmaceutical education...[which] provide[s] a standardized licensure examination [in the NAPLEX, FPGEE and MPJE] and...improve[s] the standards of pharmaceutical education [and] licensure.” Tr. pp. 26-27; NABP Ex. Nos. 3, 5. A clear educational purpose, much like the intention found in Lorenz, *supra*, of improvement of education standards in pharmacy, is NABP's intention. While Lorenz was a case that involved an intention to improve education standards in the field of medicine, this matter involves improvement in the education standards of a specific area of medicine -- pharmacy. Moreover, NABP goes even further in its expression of an educational purpose because it seeks uniform minimum standards in pharmaceutical education as well as standardized licensure exams based upon the same minimum education standards.

NABP's intention is not only stated clearly in its corporate documents but is, in fact, borne out by the actual existence of educationally exempt activities that are performed on the property. These activities include development and administration of pharmacy exams, assistance in the provision of uniform licensure procedures for local

and foreign candidates, presentation of continuing pharmacy education programs, and the supply of information to ACPE and pharmacy schools that relates to college/university pharmaceutical education standards, curricula and accreditation. All of these activities are performed with the goal of ensuring that initial and/or transferred pharmacist candidates possess the knowledge of the curricula of ACPE approved school programs which are the minimum uniform pharmaceutical education standards.

NABP's NAPLEX, MPJE and FPGEE are all based upon the curricula of accredited U. S. pharmacy college/university programs. These tests examine both the candidates' knowledge of substantive matter that they were taught as well as that which pharmacists need to know to practice pharmacy – chemistry, biology, practice applications, drug knowledge, drug side-effects, patient counseling and profiles. Having national standardized licensure exams which test the same subjects that are, in fact, taught in accredited pharmacy programs allows the standard for both pharmacy education and licensure to be uniform. NABP provides just this service to the schools' and universities' accrediting entity – ACPE – all of which assist in the establishment of minimum pharmacy education standards so as to improve pharmaceutical education.

In addition, ACPE uses NABP's test results, comments, opinions and other information to assess whether college/university pharmacy curricula meet the same standards of pharmacy, and as such, are entitled to continued accreditation. All of this reflects activities pursued for the improvement of pharmacy education as well as establishment of uniform pharmacy standards, based upon uniform education standards, as mandated by various state boards like Illinois and ACPE.

NABP also engages in a host of activities much like those found to represent tax exempt educational activities in Lorenz, *supra*. The NABP activities most closely aligned with those espoused in Lorenz are: 1) publication of admission information; 2) compilation of student/candidate information; 3) sponsorship of admission tests and teaching institutes; 4) evaluation of student/candidate performance as it relates to scholastic and professional performance; 5) provision of placement functions; 6) appraisal of school curricula; and 7) participation in the process of the accreditation of schools.

The Association in Lorenz published information about medical schools that listed admission criteria. NABP publishes a newsletter that informs of its and its member's objectives and goals. This would include information on entry to the pharmacy profession which would include passage of NABP's exams after graduation from an accredited school. NABP also publishes bulletins that contain registration information regarding their exams.

Like Lorenz, NABP compiles statistics on the pass/fail rates of students taking NABP's national exams that include both a breakdown of these rates as applied to various pharmacy schools and of individual students. These passage rates are reported to the pharmacy schools and ACPE, with a diagnostic breakdown, by content areas, being provided with regard to failing candidates. The medical schools in Lorenz used such information to develop their instruction programs. The statistical information provided by NABP is used by both the pharmacy schools and ACPE to evaluate, improve, maintain/develop their curricula, as well as, evaluate the viability of their accreditation.

Both, the Association in Lorenz and NABP, sponsor admission tests the former for medical schools and the latter for pharmacy licensing exams. Both also provide teaching institutes. NABP assists in teaching through their workshops, programs and presentations. Moreover, many professional continuing education programs are offered to students. This is especially true in the pharmacy area where pharmacy technicians must be trained in six different areas of pharmacy within the first six months of their employment. When a pharmacy technician is enrolled in a college/university pharmacy program, said technician is deemed a student pharmacist. NABP's programs allow for just such training of pharmacy technicians and student pharmacists.

NABP provides summary reports to each pharmacy school on their individual students' performance with respect to its exams. These reports are also provided to NABP members and ACPE. In addition, pharmacy schools, NABP members, ACPE and failing candidates receive specific diagnostic breakdowns, by content areas with respect to failing exam candidates. While an evaluation of students was done in Lorenz to assess for scholastic and professional performance prior to entry into medical school, this student evaluation information, be it upon completion of school, is utilized for the same purpose – assessment of scholastic and professional performance of graduates. Said NABP information is also utilized to ensure schools provide the required scholastic and professional experience for prospective and current pharmacy students because the NABP information serves as the basis for schools' curriculum, which is continually refined, revised and clarified, as needed, based on such NABP reports.

The offering of student internships is very much akin to the supply of placement functions offered by the Association in Lorenz. NABP also provides student interns with a preceptor and clinical training.

NABP's NAPLEX and MPJE results are the sole objective assessments utilized by ACPE and pharmacy schools to assess such schools' curricula. NABP also provides detailed, objective assessments on the individual disciplines found in pharmacy school curricula which the pharmacy schools and ACPE use to assess pharmacy schools' curricula. NABP works with ACPE, the College of Pharmacy and the states on this detailed assessment program. NABP's production of exam reports and assessments, along with opinions and feedback provided to ACPE on curriculum standards are activities that involve NABP in the curriculum appraisal process, and as such, NABP, like the Association of Lorenz, is a part of the curriculum appraisal process.

Lastly, the Association in Lorenz, through its inspection and liaison committee was a part of the accreditation process of all U.S. medical schools. NABP through its exam blueprint, summary reports, and detailed curriculum assessments, appointment of ACPE board members, feedback and opinions to ACPE is also a part of the accreditation process for all U.S. pharmacy schools. Moreover, a school's failure to show adherence to the established pass rate that NABP sets for its exams can result in not only ACPE monitoring the school, but can result in probation status for a school which endangers a pharmacy school's accreditation.

Like the Association in Lorenz, NABP's activities reflect operations for development/assessment of pharmacy school curricula, accreditation of pharmacy schools and improvement of educational standards in the field of pharmacy and as such

are not a peripheral connection to pharmaceutical colleges. The services that NABP provides are designed “to assist the furtherance of intellectual instruction” (Lorenz at 129) as reflected in pharmacy school curricula to which pharmacy school accreditation has a basis. NABP’s activities are certainly an adjunct of the education process, if not more. This is especially true when one considers Goodman, *supra*, that found sports, dormitories and dining rooms to be such an adjunct. Furthermore, NABP’s activities establish and improve pharmacy education standards while also tendering assistance with a state mandated function that requires national pharmacy education standards to be tested, and as such, meets the statutory test of a primary function that in and of itself qualifies for exemption. *Id.*

NABP’s exam blueprint, statistical compilations, summary reports, discipline specific assessments and other feedback/opinions provide the basis for the national core curricula standards that pharmacy schools must have for accreditation by ACPE. ACPE deems NABP’s activities necessary to both the establishment and measurement of pharmacy schools’ core curricula education, for purposes of accreditation that both measures the quality of and improves a student’s education. Both NABP’s exams and pharmacy school curricula are based upon national standards recognized by ACPE. Not only does NABP participate in the development of national education curricula standards of pharmacy schools but the failure of a school to meet these standards, as established in NABP national exams can endanger a failing school’s accreditation. Pharmacy schools’ curricula reflect instruction that is intended to pass NABP’s national exams so as to not only achieve the nationally established curricula goals of ACPE but also preserve a school’s accreditation status. A continuous circle of NABP developing exams based

upon national education curriculum that in turn teach to achieve passage of NABP's national exams exists. Such a process between NABP and pharmacy schools ensures the curriculum standards recognized by ACPE are met. NABP, pharmacy schools and ACPE are continuously re-evaluating and refining national pharmacy standards, curriculum, and exams so as to provide uniform quality pharmaceutical education.

It is quite clear that the activities described above are, in fact, the primary activities of NABP and while such activities produce significant income, such revenue generation is not the primary or motivating factor for NABP's existence. Improvement of pharmacy education through uniform examinations based upon uniform school curricula is the primary purpose of NABP. NABP is organized as a not-for-profit corporation which has members, not shareholders, and as such issues no capital stock. NABP's articles of incorporation declare that "no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons" (NABP Ex. No. 3). All of this reflects an intent that NABP is not organized to operate "with a view to profit." Goodman, *supra* at 375.

Eighty-six percent (86%) of NABP's 2004 revenue was derived from exam and licensure fees. NABP's total program operating expenses for its examinations and licensures represent seventy-three percent (73%) of its entire 2004 operating expense, with the remaining twenty-seven percent (27%) going toward the normal and common general and administrative expenses of any corporation like salaries, payroll taxes, postage and office equipment just to name a few. Unlike Turnverein, *supra*, the subject property is not primarily used to generate a profit, but, like Illini Media, *supra*, the revenue is incidental to NABP's activities and objectives of (administering pharmacy

exams and processing pharmacy licensure applications). It is also clear that such revenue provides the funds necessary for NABP's primary operations of exam development and administration, data collection, reports, teaching programs and licensure processes.

As a result of the above, NABP clearly has sustained its burden in demonstrating its entitlement to the education exemption for the subject property.

Inasmuch as NABP is found exempt because their use of the property is for exclusively educational purposes, there is no need to consider whether exemption is warranted based upon charitable use and/or ownership.

Because the parties stipulated that the subject property was in the "actual process of development" by NABP from the period January 1, 2004 through November 29, 2004 as the phrase is used in Weslin Properties, Inc. v. Illinois Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987), it is recommended that the subject property be exempt from real estate taxes for the entire 2004 assessment year pursuant to 35 ILCS 200/15-35(c).

January 10, 2008

Julie-April Montgomery
Administrative Law Judge³

³ The administrative law judge that heard this matter is Mimi Brin. Prior to the writing of this recommendation, she telephoned counsel for both sides and asked whether there was any objection to having another administrative law judge write the recommendation. There was no objection from either party. The credibility of witnesses or documents did not present as an issue in this cause.